

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:15-CV-00247
BANKRUPTCY CASE NO. 4:15-BK-40251**

IN RE:

**DOUGLAS SALATHA MILLER
MYRA SALMON MILLER,
Debtors,**

**CHRIS S. MILLER,
Appellant,**

vs.

**STEVEN G. TATE
Appellee.**

**MEMORANDUM OF
OPINION AND ORDER**

THIS MATTER is before the Court on the Appellant's response [Docs. 5, 6] to this Court's Show Cause Order [Doc. 4].

On December 15, 2015, this Court entered an Order directing Miller to show cause for his failure to comply with the applicable rules and to correct various deficiencies identified by the Court, including paying the required filing fee. [Doc. 4]. Miller was specifically warned that "failure to comply with all of the applicable rules and to correct the deficiencies identified in this Order, may result in dismissal of his appeal." [Id.]. On December 30, 2015,

in response to this Court's show cause Order, Miller filed documents captioned "Affidavit"¹ [Doc. 5], "Amendment to Affidavit" [Doc. 5-1], "Request to Proceed *In Forma Pauperis*" [Doc. 6], and ninety-two (92) pages of exhibits.

Miller's filings once again fail to comply with the Court's Order. He fails to assert whether and on what date the Notice of Appeal was deposited in Warren Correctional Institution's internal mail system. He fails to state whether he affixed proper postage. Moreover, none of his statements are notarized or contain a declaration in compliance with 28 U.S.C. § 1746. Additionally, Miller has not paid his filing fee, he has not filed a designation of items to be included in the record, and he has not filed a statement of issues to be presented on appeal.

Because there is insufficient evidence from which this Court can determine that Miller's Notice of Appeal was timely filed, this Court lacks jurisdiction to adjudicate the appeal and must dismiss the case. See Smith v. Dairymen, Inc., 790 F.2d 1107, 1109 (4th Cir. 1986). Because the appeal

¹ The document submitted by Miller is not an affidavit as it is not notarized. See 3 Am. Jur. 2d Affidavits § 8. The document also fails to qualify as an unsworn declaration under penalty of perjury as he fails to declare under penalty of perjury that the statements made in his "Affidavit" are true and correct. See 28 U.S.C. § 1746. Miller merely recites, "I Chris S. Miller, hereby declare under penalty of perjury that *on December 28, 2015 no notary public was available* here at Warren Correctional." [Doc. 5 at 14]. Nothing else is declared under penalty of perjury.

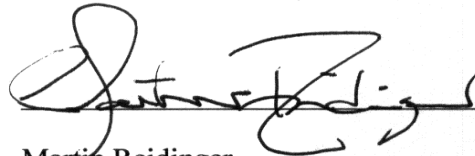
is dismissed, Miller's Motion to Proceed *In Forma Pauperis* is also denied as moot.

Accordingly, **IT IS, THEREFORE, ORDERED** that Miller's appeal is hereby dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that Miller's Motion to Proceed *In Forma Pauperis* is hereby dismissed as moot.

IT IS SO ORDERED.

Signed: January 20, 2016


Martin Reidinger
United States District Judge

